IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

RSA No.129/1996

Reserved on.22.6.2007

Date of decision: 06.08.2007.

Bhagat Ram **…Appellant.**

Versus

Hukam Chand and Others. **…Respondents.**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No*

For the Appellant : Mr. Romesh Verma, Advocate.

For the respondents: Mr. Seema Guleria, Advocate.

Rajiv Sharma, J.

By way of the present second appeal a challenge has been laid to the judgment and decree dated 16.11.1995 in civil appeal No. 32-NS/13 of 1991 passed by the Additional District Judge, Solan.

The brief facts necessary for the adjudication of this second appeal are that the appellant-plaintiff (hereinafter referred to as the plaintiff) had filed a civil suit for declaration and permanent prohibitory injunction. Learned trial court on the basis of the pleadings of the parties had framed the following issues on 21.6.1990:

1. Whether the plaintiffs are exclusive owner of land comprising in khasra No.8/1, measuring 1 bigha, as alleged?
OPP

2. Relief.

The trial court had recorded the following findings on the issues:

Issue No.1: No.

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No

Issue No.2: Suit dismissed without cost as per operative portion of the judgment.

The trial court on the basis of the evidence led by the parties had dismissed the suit on 25th July, 1991. The plaintiffs feeling aggrieved by the judgment and decree dated 25th July, 1991 had preferred appeal before the Additional District Judge, Solan on 13.9.1991. The learned Additional District Judge had framed the following points for determination:

1. **Whether the findings of the lower court below are justifiable under the law and on the face of material brought on record by the parties?**
2. **Relief.**

The Additional District Judge, Solan had recorded the following findings on the above points:

Point No.1 Yes.

Point No.2 Appeal dismissed as per operative portion of the judgment.

The Additional District Judge, Solan had dismissed the appeal on 16.11.1995. The second appeal was admitted on the following substantial questions of law:

1. **Whether the courts below have failed to determine real point of controversy involved in the case in accordance with law?**
2. **That whether there has been misreading of pleadings and mis-appreciation of oral and documentary evidence?**
3. **Whether the appellate court has ignored admissions as made by respondents on the basis of which appellant has proved his claim?**
4. **Whether the respondents are bound the admissions as made by them in proceedings under section 145 Cr.P.C. and they cannot be allowed to go back of the same?**

5. **Whether the presumption of truth is attached to the entries in revenue record, has been rebutted on the basis of the comprise and the statements as made by respondents before the learned Executive Magistrate, Arki?**

Mr. G.D. Verma, Sr. Advocate had strenuously argued that both the courts have not appreciated the document Ex.PW-2/A and hence the impugned judgment and decree are not sustainable in the eyes of law. He had further contended that on the basis of the evidence led by the parties, suit ought to have been decreed.

Ms. Seema Guleria, Advocate for the respondents had supported the judgment and decree passed by the Additional District Judge dated 16.11.1995.

I have heard the learned counsel for the parties and perused the record.

Since all these questions are inter connected, therefore, can be conveniently discussed together. The plaintiff, Bhagat Ram, had appeared as PW-3 and has admitted in his cross-examination that khasra No.8 was jointly owned by the plaintiffs and defendants. He had also admitted that in the proceedings under section 145 of the Code of Criminal Procedure, the defendant No.2 Ram Swaroop had not given any statement. PW-4, Sh. Uma Dutt, had admitted in his cross-examination that no partition had taken place between the parties. PW-7 Bhagwan Dass, Patwari had deposed that he found the possession of the defendants over khasra No.8 on the spot while conducting the Girdawari. It is evident from the perusal of Ex.PW-2/A that the defendants No.1 and 3 had agreed to give the land, which was adjacent to the house of the plaintiff Bhagat Ram and in the partition that land will be shown in the share of the plaintiff. They had not agreed that they will hand over the

possession of the land to the plaintiff No.2 Hari Singh. No evidence has been placed on record that the plaintiffs were handed over the possession by the defendants No.1 to 3. The plaintiff No.2 and the contesting defendants were not party to the alleged compromise. The defendant Kahan Chand and Bhagwan Dass had stated in their statements recorded before the Executive Magistrate under Section 145 Cr.P.C. "that final settlement has been arrived and according to that we have left one bigha of land adjoining to our house to the plaintiffs and during partition the same will be given to the complainant". Even the so-called settlement was not given effect to since the plaintiffs were never put in possession by the defendants. PW-7, Bhagwan Dass, Patwari had stated that he remained Patwari in Patwar Circle, Palog from July, 1987 to July, 1989 and had prepared the *tatima*, but in his cross-examination he had stated that the entire khasra No.8 was joint qua the parties and while conducting the girdawari on the spot, the same was found in possession of the co-sharers and he has further testified that when he visited the spot, khasra No.8 was found in possession of the defendants. Sh. Ram Swaroop, defendant No.2, while appearing as a witness had categorically stated that he was not a party to the alleged compromise. The plaintiffs have failed to place on record the copy of the sale deed, gift deed or will etc. to prove the title over the suit land. In the copy of jamabandis for the year 1983-84 Ex.PW-3/A, Sh. Bhagwan Dass and Ram Swaroop are recorded owners in possession to the extent of 1/3rd share, Sh. Kahan Singh to the extent of 1/3rd and Bhagat Ram and Hari Singh to the extent of 1/3rd share and no other document has been produced to show that the house was in exclusive ownership and possession of the plaintiff.

The question whether the plaintiffs are exclusive owners of the land in suit is a question of fact. The Court will not interfere with the findings of

fact recorded by the courts below. There is no question of law much less to say substantial question of law in the second appeal.

As a result the second appeal is dismissed. There shall be no order as to costs.

(Rajiv Sharma), Judge

August 6, 2007
Awasthi